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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,038	07/15/2003	Justin Shimck	6126US	7511
30173	7590	03/17/2008		
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440				
EXAMINER				
MAHAFFEY, KELLY J				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/620,038

Applicant(s)

SHIMEK ET AL.

Examiner

Kelly Mahafkey

Art Unit

1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 3, 27, 29-39 and 81.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Kelly Mahafkey/

/Lien T Tran/
Primary Examiner, Art Unit 1794

Cont. 3: The proposed amendments filed February 27, 2008 will not be entered as they are not deemed to place the application in better form for appeal. Claim 29 previously depended on claim 22, which depended on claim 20; claim 29 has been amended to depend on claim 20. Applicant argues, Remarks Page 9, that the 112 rejection should be withdrawn based upon the submitted amendments, however the amendment does not resolve the 112 issue. The 112 rejections of claims 30 and 31 remains as the recited claims would remain unclear with the proposed amendment. Claim 31 depends on claim 30 which depends on claim 29, which would depend on claim 20. Claim 20 recites, "wherein the dried soft aerated food product is in the form of a phase or portion of a composite food product." Claim 30 recites, "The food product of claim 29 admixed with a second dry food in particulate form." Claim 31 recites, "The food product of claim 30 admixed with ready-to-eat breakfast cereal." As previously stated, it is unclear as to if the "food product of claims 30 and 31 is referring to the "dried soft aerated food product" or to the "composite food product", both recited in claim 20.

Cont. 11: Applicant's comments filed February 27, 2008 have been considered but are not deemed persuasive.

Applicant argues that the claimed properties are not inherently taught by Roy, Remarks Pages 7-8. Applicant is referred to the final office action mailed February 27, 2008, pages 4-5 which addresses this argument. Furthermore, applicant points out that the marbit composition as stated in the office action mailed April 24, 2007, page 6 is not supported by the teachings of Roy. Examiner has noted that a typo was made in the office action, however notes that the teachings of Roy still read upon the claimed ingredient percentages, and thus anticipate the claimed invention as stated in the previous office actions. In Example 1, Roy teaches a final product which comprises 0.1% water, 89.22% of a sucrose solution, and 5.7% of a gelatin solution. The sucrose solution consists of 65.72% sucrose, 12.38% corn syrup, 10.29% dextrose, and 11.61% water. The gelatin solution consists of 33.33% gelatin and 66.67% water. Thus the final product as taught by Roy in Example 1 comprises 0.1% water, 89.22% of a sucrose solution (or about 9% dextrose, about 10% corn syrup, about 59% sucrose, and about 10% water), and 5.7% of a gelatin solution (or about 4% water and 2% gelatin). The final product as taught by Roy in Example 1 contains about 14% water (10% from the sucrose solution and 4% from the gelatin solution) and thus about 86% dry ingredients. Thus on a dry weight basis, the final composition of Example 1, as taught by Roy contains about 2% gelatin and about 90% saccharide components or 11% dextrose, about 11% corn syrup, about 68% sucrose. Applicant argues that Roy does not teach of about 9% dextrose or 9% glycerin, i.e. a softener, as stated in the previous office action. As stated above, a typo was made in the office action and Roy does not teach of 9% dextrose in the composition of Example 1; Roy teaches of 11% dextrose in the marbit composition. Roy also teaches, paragraph 0010, that glycerin alone can be substituted for dextrose alone, thus Roy teaches that about 11% glycerin, i.e. a softener can be included in the marbit composition.

Applicant argues that Zietlow '216 teaches away from the claimed invention. This argument is not convincing and has been addressed on Page 5 of the office action mailed January 14, 2008.

Thus the rejections are maintained for the reasons of record, as set forth in the Final Office action.